IN THE COURT OF JUDICATURE AT BOMBAY

ORIGINAL SIDE JURISDICTION

COMPANY PETITION NO. 105 OF 1994

In the matter of

Dhanamal Silk Mills P.Ltd ....Company

Mr.S.C.Naidu with Anoshak Daver i/by.C.R.Naidu & Co. for the Respondent company.

Ms Niloufer Bhagwat for Surat Silk Labour Union.

CORAM: S.C. DHARMADHIKARI, J.

10th January, 2007.

P.C :-

1. Mr.Naidu, appearing for the company and Ms.Bhagwat appearing for the Union of workers make a joint request that this Company Petition was registered in the light of the opinion of BIFR

forwarded to this court in exercise of its power under Section 20(2) of the Sick Industrial Companies (Special Provisions) Act, 1985. The order dated 29.6.1990 was subject matter of several proceedings including Appeal before the AIFR, Writ Petition before this court, Special Leave Petition in the Hon'ble Supreme Court and ultimately a Review Petition once again in this court.

2. Ms.Bhagwat, has invited my attention to an order passed on 6.2.2001 in Review Petition No. 21 of 1999 by a Division Bench of this court. The Division Bench set aside its earlier order of dismissal of writ petition and remanded the matter to BIFR for fresh consideration. In other words, the order dismissing the writ petition so also those impugned in the writ petition, namely, of BIFR and AAIFR were set aside.

3. In the meanwhile, steps were taken for revival of the company. A scheme was framed and the promoters brought in fresh funds. The board of directors was reconstituted. After the liabilities

to the bankers and unsecured creditors were paid off, the operations of the company were revived and it made an operational profit. In the light of these subsequent developments, an application was made to AAIFR in the pending Appeal praying that the company is no longer a sick industrial company and be declared as such. In other words, all proceedings under the SICA be dropped. Order to that effect was passed by AAIFR in Appeal No. 133 of 2004 and 111 of 2004.

4. Aggrieved by this order of AAIFR, the appellant in Appeal No. 111 of 2004 filed a writ petition in this court which was dismissed by this court on 20.9.2005. The Supreme Court also dismissed the Special Leave Petition challenging the order passed by this court. Thus, the AAIFR's order holding that the company is not a sick company and dropping the proceedings under the SICA is confirmed throughout.

5. In the light of this subsequent development and in facts peculiar to this case, I am satisfied

that, the opinion of the BIFR dated 29.6.1990, which is the basis for initiation of the proceedings for winding up, does not survive. It is in this peculiar factual backdrop that I proceed to dismiss this company petition. However, dismissal of this petition does not prevent the creditors, if any, of the company to initiate such proceedings as are permissible in law for recovery of their dues so also seeking winding up of the company afresh.

(S.C.DHARMADHIKARI, J)